

Notice of Allowability

Application No.

10/825,339

Examiner

Jack I. Berman

Applicant(s)

HORSKY ET AL.

Art Unit

2881

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☐ This communication is responsive to _____.
2. ☒ The allowed claim(s) is/are 66-96.
3. ☒ The drawings filed on 15 April 2004 are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.


Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
 6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☒ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☒ Information Disclosure Statements (PTO-1449 or PTO/SB/08),
Paper No./Mail Date 4/15/04
4. ☐ Examiner's Comment Regarding Requirement for Deposit
of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☐ Interview Summary (PTO-413),
Paper No./Mail Date _____.
7. ☒ Examiner's Amendment/Comment
8. ☐ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____.


JACK BERMAN
PRIMARY EXAMINER

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Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claim 1, drawn to an ion source, classified in class 315, subclass 111.81.
- II. Claims 66-96, drawn to a multi-mode ion source, classified in class 250, subclass 427.
- III. Claims 97-101, drawn to a vaporizer, classified in class 219, subclass 271.

The inventions are distinct, each from the other because of the following reasons:

Inventions II and I are related as combination and subcombination. Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP § 806.05(c)). In the instant case, the combination as claimed does not require the particulars of the subcombination as claimed because it does not require that the non-arc discharge ion source be the one claimed in claim 1. The subcombination has separate utility such as an independent ion source in an ion implanter or a mass spectrometer.

Inventions I and III are related as combination and subcombination. Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP § 806.05(c)). In the instant case, the combination as claimed does not require the particulars of the subcombination as claimed because the ion source claimed in claim 1 does not require the use of the vaporizer claimed in claim 97 as the gas source. The subcombination has separate utility such as a vaporizer for use in molecular beam epitaxy.

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Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

During a telephone conversation with John Paniaguas on December 21, 2004 a provisional election was made without traverse to prosecute the invention of Group II, claims 66-96. Affirmation of this election must be made by applicant in replying to this Office action. Claims 1 and 97-101 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in the same telephone interview with John Paniaguas on December 21, 2004.

The application has been amended as follows:

IN THE CLAIMS:

Claims 1 and 97 are canceled.

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Claim 66 (Currently Amended): A multi mode ion source comprising:
an ion source incorporating an ionization chamber for ionizing gas species and configured to have at least two discrete modes of operation; namely, [a reflex] an arc-discharge mode and a non-arc discharge [reflex] mode of operation.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The patents to Luce, Lawton, and Dagenhart show that non-arc discharge ion sources using a beam of electrons injected into an ionization chamber (Luce and Dagenhart using a reflex mode and Lawton using a non-reflex mode) are known. U.S. Patent 5,556,204 to Tamura et al. is cited on the attached Form PTO-892 because it was cited in the prosecution of the parent application and applicant apparently intended to cite it on the IDS form filed on April 15, 2004 along with the other references cited from that prosecution, but it was mistakenly listed as U.S. Patent 556,204.

The following is an examiner's statement of reasons for allowance: While applicant admits that arc-discharge ion sources, such as Bernas ion sources, are known and the patents to Luce, Lawton, and Dagenhart show that non-arc discharge ion sources using a beam of electrons injected into an ionization chamber are known, the prior art does not disclose or suggest a multi-mode ion source that can be operated in either an arc discharge mode or a non-arc discharge mode.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue

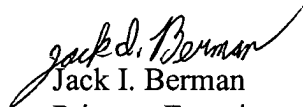
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fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jack I. Berman whose telephone number is (571) 272-2468. The examiner can normally be reached on M-F (8:30-6:00) with every second Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John R. Lee can be reached on (571) 272-2477. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Jack I. Berman
Primary Examiner
Art Unit 2881

jb
12/21/04